binds the person making the offer only from the time that it came to his knowledge. The contract in this case, is presumed as entered into at the place where the offer was made." This has been copied in the Porto Rican Code, Sec. 1229, and Sr. de Arluciaga says that the Mexican Code holds that "the contract is not perfected by the written acceptance but with the arrival of the return mail, when the offer disappears as such, and the contract is perfected." On the other hand the Spanish Commercial Code of 1885, Art. 54, says, "contracts executed through correspondence shall be completed from the time an answer is made accepting the proposition or the conditions by which the latter may be modified." This provision has been copied in the Mexican Commercial Code (see Art. 80; Taylor's Translation, 1902). Sr. de Arluciaga suggests the possibility that the law intends that there should be such a difference between the civil and the merchantile acts, which certainly seems an unsatisfactory solution of the problem. He also quotes Sr. Estasen as appearing to believe that the Civil Code modifies the corresponding article of the Commercial Code, as being a subsequent enactment. Possibly the interpretation of the Commercial Code may not have been to its promulgators what it seems to be to some of the commentators thereon. The Spanish Commercial Code as quoted by Sr. de Arluciaga says, *"los contratos que se celebren por correspondencia queradan perfeccionados desde que se conteste acceptado la propuesta ó las condiciones con que ésta fuere modificada."* The *desde que se conteste,* translated by "from the time of the reply" might as well mean "from the time the reply *reaches the offeror"* as "from the time the reply *is dispatched."* If the former interpretation were adopted the apparent contradiction between the two codes in the same system would be avoided and the Spanish and Mexican law would be at one, and both would be opposed to the American rule on the subject.

It is quite evident that the Spanish writer has had some difficulty with what Anson so unkindly calls "that unhappy experiment in codification, the Indian Contract Act." He says that "the Indian Contract Act in Art. 4 seems to adopt the theory of 'dispatch,' while on the other hand in Art. 5, 'the communication of an acceptance is complete, as against the acceptor, when it comes to the knowledge of the proposer,' by which it is plainly indicated that the acceptance is not perfected until it is communicated."

It may be said in conclusion that the clearest statement of the English principle found in any of the code systems is that given in the Japanese Civil Code, Article 526, "Contracts between persons living in different places are concluded when notice of acceptance is sent off." EMILIANO GALA.

THE POLICE POWER AND CITY ORDINANCES FOR THE DISPOSAL OF GARBAGE.—The extent of the police power has always been a subject of much dispute. While the courts seem agreed on the general principles governing the exercise of this power, they are not by any means unanimous when they come to make application of these principles to particular cases. The truth of this observation is demonstrated by two cases, (*California Reduction Co.* v. *Sanitary Reduction Works of San Francisco,* 26 Sup. Ct. Rep. 100 and *Gardner* v.

Michigan, 26 Sup. Ct. Rep. 106) recently decided by the Supreme Court of the United States. While the facts of these two cases differed somewhat, the issues were practically the same.

In the former case the facts were as follows: under full constitutional and statutory authority, the board of supervisors of San Francisco by ordinance granted to one Sharon, the assignor of plaintiff, the sole and exclusive right and privilege, for fifty years, to cremate and destroy garbage, dead animals, house refuse, etc.—the grantee to charge and collect therefor not more than twenty cents per load. The ordinance further provided that after the completion of a crematory to be erected by the grantee, all of the garbage of the city should be conveyed to it and there destroyed. The California Reduction Company was organized for the purpose of removing by boats and barges large quantities of garbage, etc., from San Francisco and depositing the same on lands in another county, and had contracts with the individual defendants for the exclusive disposal of all such refuse matter as they should collect. Suit was brought to enjoin the defendants from violating the above ordinances.

In *Gardner* v. *Michigan* the facts were that an ordinance of the city of Detroit provided for a uniform system for the collection and disposal of the garbage of the city. The Detroit Sanitary Works contracted with the city to undertake the work for a term of ten years. The ordinance made it unlawful for anyone except this corporation or its agents to collect or transport garbage in the city. The defendant (appellant) was arrested and fined for collecting refuse and swill from certain hotels in the city, which refuse he used to feed his hogs. In each case the defense was that the ordinance in question deprived the defendants of property without compensation and was contrary to the fourteenth amendment of the Constitution of the United States, and in each case the court by a divided vote sustained the ordinance.

As was said in the *Slaughter House Cases,* 16 Wall. 36, 62, the police power is from its nature incapable of any exact definition or limitation. The courts seem to have been neither able nor willing to circumscribe the power. This much can be said, however, the police power extends to all matters affecting the public health, safety and morals. *Lawton* v. *Steele,* 152 U. S. 133; *Stone* v. *Mississippi,* 101 U. S. 814. But it cannot be used as an excuse for unjust and oppressive legislation. *Wenham* v. *State,* 65 Neb. 394, 91 N. W. 421, 58 L. R. A. 825. The courts as a rule place a liberal interpretation on the power and do not so restrict it as to hinder the legislature in dealing with the various necessities of society and new circumstances arising which call for legislative intervention in the public interest. And in the later cases, especially, the courts have gone very far in sustaining legislation under the police power.

The exercise of the police power is limited by the guaranties in the Constitutions of the several states and of the United States against the destruction or impairment of vested or property rights, the taking of private property without the payment of a just compensation and the taking of life, liberty, or property without due process of law. *Slaughter House Cases,* supra. Though it is agreed that these constitutional provisions form limitations on the exercise of the police power, it cannot be said that the police power always stops where they begin. In *Anderson* v. *State,* (Neb.) 96 N. W. 149, it is said:

"A police regulation obviously intended as such and not operating unreasonably beyond the occasion of its enactment is not invalid simply because it may affect incidentally the exercise of some right guaranteed by the Constitution. In all matters within the police power some compromise between the exigencies of public health and safety and the free exercise of their rights by individuals must be reached." *Wenham* v. *State,* supra. If there can be said to be one definite test in cases of this sort where the police power trenches on the rights of private citizens and seems to conflict with these constitutional provisions for the security of the property of the private citizen, it is the test of reasonableness—whether the regulation in question really furthers the public health, comfort, safety and morals, or is merely an arbitrary and unreasonable interference with the rights of a private citizen under the guise of a police regulation. *Train* v. *Boston Disinfecting Co.,* 144 Mass. 523; *Wilson* v. *Railroad,* 77 Miss. 714; *Mugler* v. *Kansas,* 123 U. S. 623; *Yick Wo* v. *Hopkins,* 118 U. S. 356; *Lawton* v. *Steele,* 152 U. S. 133. And the judiciary can review legislative action in respect to a matter affecting the general welfare only when, though purporting to be enacted for the protection of the public health and morals, the regulation has no real or substantial relation to those objects or is beyond all question a "plain, palpable invasion of rights" secured by the Constitution. *Jacobson* v. *Massachusetts,* 197 U. S. 11; *Mugler* v. *Kansas,* 123 U. S. 623, 661; *Minnesota* v. *Barber,* 136 U. S. 313, 320; *Atkin* v. *Kansas,* 191 U. S. 207, 223. As to what is a plain invasion of constitutional rights judges may differ. It must be to a great extent a matter of personal opinion without any definite tests by which to decide.

In the principal cases mentioned at the beginning of this note the cities had attempted to devise a safe, uniform and effective system for the disposal of garbage and refuse. It does not seem that the courts could justly decide these ordinances unreasonable or unnecessary or not intended bona fide for the good of the public health. More than this they could not do in any case, for it is not within the province of the courts to inquire whether the systems provided were the best to be had. The taking of property, if any, was only incidental to the main purpose of the ordinance; and as it is said in *Mugler* v. *Kansas,* supra, "The exercise of the police power by the destruction of property which is in itself a public nuisance, or the prohibition of its use in a particular way, whereby its value becomes depreciated is very different from taking property for public use or depriving a person of his property without due process of law. In the one case a nuisance only is abated; in the other, unoffending property is taken away from an innocent owner."

These and other late cases upholding city ordinances and regulations under the police power certainly justify the conclusion that the power is growing and developing with the country. This need not be alarming while our higher courts are presided over by impartial men of sound judgment and discretion. But one may well ask whether there may not be great danger in a power so indefinite and yet so broad that it has been asserted to extend even to the protection of the aesthetic sensibilities of the public. *Attorney General* v. *Williams,* 174 Mass. 476, 478. W. G. S.